IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

MONDAY, THE 12TH MARCH 2007 / 21ST PHALGUNA 1928

CRL.A.No. 1665 of 2006()

CC.425/2004 of JUDL.MAGISTRATE OF FIRST CLASS, QUILANDY
ORDER DATED 26/06/2006 IN CRL.LP NO.310/2006

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APPELLANT: COMPLAINANT

MUHAMMED, S/O.ABDURAHIMAN,
VALAPPIL HOUSE, ERANHIKKAL, KOZHIKODE,
REP. BY POWER OF ATTORNEY HOLDER,
FARIS.V., S/O.MUHAMMED KOYA, VELUTHEDATH HOUSE.

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENTS: ACCUSED AND STATE
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1. SHAMEEMA, W/O.NAZAR,
THAIVECHAPARAMBIL HOUSE, NADAPURAM,
KALLACHI.

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY FOR R1, ADV. SRI.PULIKKOOL ABUBACKER
SRI.M.JISHO JOHN
FOR R2, PUBLIC PROSECUTOR, SRI PUZHAKKARA MUHAMMED

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 12/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M.JAMES, J.

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Crl.A No. 1665 of 2006 (B)

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Dated this the 12th day of March, 2007

J U D G M E N T

The complainant in C.C.No.425/2004 on the file of Judicial Magistrate of the First Class, Quilandy, is the appellant. The complaint was preferred under Section 138 of the Negotiable Instruments Act. On the appointed date, when the case was posted for adducing evidence from the side of the complainant, he was absent, although, there was a no further time order. Hence, the complaint was dismissed and accused acquitted. Thus, this appeal after obtaining leave.

2. In the appeal memorandum, the appellant has stated that he was represented by a power of attorney holder. On knowing that the case was posted for evidence, the power of attorney holder started from his house but because of heavy traffic problem on his way, he was unable to reach the Quilandy court, in time. The case was meanwhile called and dismissed.

3. I do not find any reason, when the case was posted with no further time for evidence, the power of attorney holder was resting in his house without attending the court.

However, this is a cheque matter and Rs.2,50,000/- is involved. Therefore, if the case is dismissed without considering the merit of the matter, it would affect the interest of both the parties. Therefore, I am of the view that the parties should be given an opportunity to agitate the matter but, of course, on the appellant-complainant paying the cost to the first respondent, the accused.

4. In the result, the appeal is allowed. The impugned order, dated 20/02/2006, dismissing the complaint, is set aside. C.C.No.425/2004 is restored to the file of Judicial Magistrate of the First Class, Quilandy, on the appellant-complainant paying an amount of Rs.2,500/- (rupees two thousand five hundred only) to the first repondent, the accused. This amount of Rs.2,500/- shall be paid by the appellant to the counsel for the first respondent-accused on or before 28/03/2007. In the event of the failure to pay the cost as above, this judgment will not be operative.

Post on 28/03/2007 for compliance report.

(J.M.JAMES)
Judge

ms